

Peter Eidenberg, OSB #075778
peidenberg@keatingjones.com
Keating Jones Hughes PC
200 SW Market St., Suite 900
Portland, OR 97201-5730
Phone: (503) 222-9955
Fax: (503) 796-0699
Of Attorneys for Johnson Mark, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MICHAEL HEALY,

Case No. 3:24-cv-00792-SB

Plaintiff,

v.

JOHNSON MARK LLC,

Defendants.

**DEFENDANT JOHNSON MARK, LLC'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
COMPLAINT**

By Johnson Mark, LLC

Defendant Johnson Mark, LLC ("defendant") answers and asserts the following affirmative defenses in response to the allegations against it in Plaintiff's Complaint. Defendant generally denies all the allegations in the Complaint except as specifically admitted or denied below. Paragraphs are referred to as numbered in the Complaint.

JURISDICTION AND VENUE

1. Defendant admits Paragraph 1.
2. Defendant admits Paragraph 2.

FACTUAL ALLEGATIONS

3. At to Paragraph 3, defendant admits plaintiff is an individual and a consumer who

allegedly defaulted on a debt owed to the original creditor, Capital One, N.A. Except as

**DEFENDANT JOHNSON MARK, LLC'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S
COMPLAINT - Page 1**

KEATING JONES HUGHES P.C.
200 SW Market St., Suite 900
Portland, Oregon 97201-5730
(503) 222-9955

otherwise admitted, defendant denies the balance of the allegations in this paragraph.

4. Defendant admits Paragraph 4.
5. As to Paragraph 5, defendant admits it commenced a collection action in Washington County Circuit Court (Case No. 23CV42142) on October 13, 2023, for an alleged default on a Capital One credit card debt, and that plaintiff was served at his home in Washington County, Oregon, on November 4, 2023. Except as otherwise admitted, defendant denies the balance of the allegations in this paragraph.
6. As to Paragraph 6, defendant admits the Complaint filed in the debt collection lawsuit alleged claims for breach of contract and, alternatively, *quantum meruit*, arising from plaintiff's alleged use of the Capital One credit card for purchasing merchandise, services, and/or cash advances prior to the time the account was charged off. The Complaint further alleged Capital One provided plaintiff with statements reflecting all charges, credits, payments, fees and finance charges incurred during the time when the credit card account was open, and that plaintiff did not object or dispute the statements within the time permitted by 15 U.S.C. § 1666. The Complaint filed in the debt collection lawsuit further alleged plaintiff failed to make all payments as agreed, breaching the agreement related to the credit card debt and causing Capital One \$15,416.32 in damages. Except as otherwise admitted, defendant denies the balance of the allegations in this paragraph.
7. As to Paragraph 7, defendant admits plaintiff disputed and denied owing the debt following commencement of the debt collection lawsuit. Except as otherwise admitted, defendant denies the balance of the allegations in this paragraph.
8. As to Paragraph 8, defendant admits plaintiff filed a Motion for Summary Judgment in the debt collection lawsuit and that defendant subsequently filed a voluntarily dismissal following Capital One's determination that the account was fraudulent. Except as

otherwise admitted, defendant denies the balance of the allegations in this paragraph.

9. As to Paragraph 9, defendant admits a Supplemental Judgement and Money Award was signed by the Honorable Brandon Thompson on April 29, 2024. Further admit that as part of its consideration of the attorney fee petition, the Supplemental Judgment acknowledges Capital One's determination that the account at issue was fraudulent and now owed by plaintiff. Except as otherwise admitted, defendant denies the balance of the allegations in this paragraph.

10. Defendant denies the allegations in Paragraph 10.

CLAIM FOR RELIEF

11. Defendant denies the allegations in Paragraph 11.

REQUEST FOR JURY TRIAL

12. Paragraph 12 does not contain any factual allegations to which a response is necessary or required.

PRAYER

13. Paragraph 13 does not contain any factual allegations to which a response is necessary or required. If a response is required, defendant denies the allegations in this paragraph.

AFFIRMATIVE DEFENSES

14. On information and belief, defendant further alleges that every claim plaintiff sets forth in the Complaint is barred from recovery, in whole or in part, by one or more of the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

15. Plaintiff fails to state ultimate facts sufficient to support a claim on which relief may be granted.

///

SECOND AFFIRMATIVE DEFENSE

(Bona Fide Error)

16. Any violation of the FDCPA, which defendant denies occurred, was not intentional and was the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. 1692k.

THIRD AFFIRMATIVE DEFENSE

(Lack of Standing)

17. Plaintiff has not suffered an injury in fact as required to have standing under Article III.

FOURTH AFFIRMATIVE DEFENSE

(Fault of Others)

18. Plaintiff's damages, if any, may have been caused or contributed by plaintiff's own conduct or the conduct of others over whom Johnson Mark has no control.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

19. Some or all of Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

RESERVATION OF RIGHTS

20. Defendant reserves the right to amend its Answer and Affirmative Defenses, in whole or in part, as additional facts are obtained through investigation and discovery.

///

///

///

///

///

///

WHEREFORE, having fully answered the claims made against it in the Complaint, defendant prays for judgment in its favor, including fees, costs, and whatever other relief the Court may deem reasonable and appropriate.

DATED this 5th day of August, 2024.

KEATING JONES HUGHES, P.C.

s/ Peter Eidenberg

Peter Eidenberg, OSB No. 075778
503-222-9955
Attorneys for Johnson Mark, LLC

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT JOHNSON MARK, LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT** on the following:

Michael R. Fuller
Olsen Daines, PC
111 SW 5th Ave., Suite 3150
Portland, OR 97204-3656
Phone: (503) 743-7000
Fax: (503) 362-1375
Email: Michael@underdoglawyer.com
Of Attorneys for Plaintiff

Kelly D. Jones
Law Office of Kelly D. Jones
819 SE Morrison St, Suite 255
Portland, OR 97214-6314
Phone: (503) 847-4329
Fax: (503) 715-0524
Email: KellyDonovanJones@gmail.com
Of Attorneys for Plaintiff

by electronically mailed notice from the court to above said attorneys on said day.

DATED this 5th day of August, 2024.

KEATING JONES HUGHES, P.C.

s/ Peter Eidenberg

Peter Eidenberg, OSB No. 075778
peidenberg@keatingjones.com, FAX 503-796-0699
Of Attorneys for Johnson Mark, LLC

Trial Attorney: Peter Eidenberg, OSB No. 075778